

BEFORE THE BOARD OF PUBLIC ACCOUNTANTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 8.54.410,) ON PROPOSED AMENDMENT,
pertaining to fees, the) ADOPTION AND REPEAL
proposed adoption of NEW RULES)
I through VI, and the proposed)
repeal of ARM 8.54.402 through)
8.54.405 and 8.54.407, all)
related to examinations)

TO: All Concerned Persons

1. On February 20, 2004, at 10:00 a.m., a public hearing will be held at the offices of the Board of Public Accountants, in room 487, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment, adoption and repeal of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Public Accountants no later than 5:00 p.m., on February 13, 2004, to advise us of the nature of the accommodation that you need. Please contact Susanne Criswell, Board of Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2389; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdpac@state.mt.us.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The Board is required by 37-50-302, MCA, to ensure that candidates for initial certification as a certified public accountant pass an examination. The Uniform CPA Exam is the only nationally recognized examination for public accountants, and the Board has recognized it for years as the basis for candidates to demonstrate their knowledge of accounting principles. Until 2004, the Uniform CPA Exam was administered solely as a "paper and pencil" test. As of 2004, the authors and owners of the Uniform CPA Exam are no longer offering the examination in the "pencil and paper" format, and will be offering only in a computer-based format. No feasible alternative examination exists, nor is there any alternative accounting examination that is recognized within the profession of public accounting or by state boards of public accounting. Accordingly, the Board concludes that there is reasonable necessity to adopt new rules to accommodate and implement the new computer-based testing format, to amend certain existing rules to accommodate and implement the computer-based testing format, and to repeal certain existing rules regarding examinations. Except as otherwise noted, this general statement of reasonable necessity

applies to all of the rules proposed for adoption, amendment or repeal.

4. The rule as proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

8.54.410 FEE SCHEDULE (1) through (1)(e) remain the same.
~~(f) Initial examination~~
~~(i) examination application and grading fee~~ 225
~~(ii) examination administration (seating) fee~~
~~(paid directly to contractor)~~ 95
~~(g) Re examination~~
~~(i) per section application and grading fee~~ 50
~~(ii) examination administration (seating) fee~~
~~(paid directly to contractor)~~ 95
~~(h) Examination proctor fee~~
~~(paid directly to contractor)~~ 95
(f) Application as candidate for examination 25
(i) through (m) remain the same, but are renumbered (g) through (k).

~~(2) Fees identified as being "paid directly to contractor" must be paid directly by the candidate to the board's contractor. The candidate will be furnished with explicit directions regarding the name and address of the applicable contractor to whom payment must be sent.~~

~~(a) Fees paid directly to a contractor are not refundable by the board.~~

AUTH: ~~37-1-134,~~ 37-50-203, 37-50-204, MCA

IMP: 37-1-134, 37-50-204, 37-50-308, 37-50-314, 37-50-317, MCA

FISCAL IMPACT: Based on the number of candidates applying to the Board to sit for the Uniform CPA Exam in 2003, and assuming that roughly the same number of individuals apply to the Board to sit for the exam, the Board estimates that approximately 250 persons will be affected by the proposed changes. Because of the changes in the way applications are processed, and the changes in the way the examination is being administered (via a computer-based system), and the increased level of contracting out services to non-governmental entities, the Board is unable to provide a meaningful estimate of the cumulative net impact of the proposed fee changes. However, the Board believes that the estimated annual revenue from the application fee, \$6,750, is (as required by 37-1-134, MCA) commensurate with the expected average annual cost of providing those reasonable accommodations required by law for persons with disabilities, and for Board expenses associated with special processing for non-routine applications.

5. The rules as proposed to be adopted provide as follows:

NEW RULE I IMPLEMENTATION OF THE COMPUTER-BASED UNIFORM CERTIFIED PUBLIC ACCOUNTANT EXAMINATION (1) It is the intent

of the board to offer only the computer-based version of the examination. As soon as a computer-based version of the uniform certified public accountant examination is available, the board will recognize it. The board expects that the computer-based version of the examination will be available for use starting in April 2004.

(2) The rules in this sub-chapter will apply after [the effective date of this rule].

(3) Each portion of the computer-based examination may be taken once each calendar quarter by any given applicant.

AUTH: 37-50-204, 37-50-308, MCA

IMP: 37-50-204, 37-50-302, 37-50-303, 37-50-308, MCA

NEW RULE II EXAMINATIONS (1) All applicants shall meet the educational requirements of ARM 8.54.408 prior to submission of an application and be approved by the board to sit for the examination.

(2) Before being issued a certificate as a certified public accountant or registered as a licensed public accountant (except applicants being registered as licensed public accountants under 37-50-304, MCA), all applicants shall pass the professional ethics for CPAs course developed by the American institute of certified public accountants (AICPA).

(3) The board adopts the development and scoring services of the AICPA and the computer delivery and digital photograph services by the board's contractors.

(4) Each application must be accompanied by a non-refundable fee and all required supporting documents, including three moral character references, transcripts and foreign academic credentials service, inc. (FACS) evaluations of foreign credentials, as appropriate.

(5) The passing score on each section is 75, subject to the granting of credit requirements of [NEW RULES IV and V].

(6) The board may contract for:

(a) examination database and reporting services; and

(b) examination administrative services.

(7) Eligible applicants shall make the necessary contacts to schedule the time and place for examination at an approved test site and pay all applicable fees. Once the candidate obtains a notice to schedule from the board or the board's contractor, the applicant has six months to sit for at least one test section. If the time expires without sitting for at least one test section, the applicant will need to reapply.

(8) An applicant who fails to take the examination as scheduled forfeits all application fees.

AUTH: 37-50-204, 37-50-308, MCA

IMP: 37-50-204, 37-50-302, 37-50-303, 37-50-308, MCA

NEW RULE III EXAMINATION CREDITS - OUT-OF-STATE CANDIDATES

(1) The board will recognize credits for any part of the computer-based uniform certified public accountant examination passed in other jurisdictions, provided those credits meet the

requirements of 37-50-204, MCA, and the applicable rules of the board, and were earned under circumstances comparable to those in Montana.

AUTH: 37-50-204, 37-50-308, MCA

IMP: 37-50-204, 37-50-302, 37-50-303, 37-50-308, 37-50-309, MCA

NEW RULE IV GRANTING OF EXAMINATION CREDIT (1) Upon implementation of the computer-based examination, an applicant may take test sections individually and in any order. Credit for any test section(s) passed is valid for 18 months from the actual date the applicant took the test section.

(a) An applicant for a certificate as a certified public accountant needs to pass all four test sections within a rolling 18-month period which begins on the date the first test section was taken and passed. An applicant may take any section of the examination up to four times during a one-year period but cannot retake any failed test section in any one three-month testing period. In the event all four test sections are not passed in the rolling 18-month period, credit for any test section passed outside the 18-month period will expire and that test section must be retaken.

(b) An applicant for a license as a licensed public accountant needs to pass any three test sections within a rolling 18-month period which begins on the date the first test section was taken and passed. An applicant may take any section of the examination up to four times during a one-year period but cannot retake any failed test section in any one three-month testing period. In the event three test sections are not passed in the rolling 18-month period, credit for any test section passed outside the 18-month period will expire and that test section must be retaken.

(2) The 18-month period in which to pass all required sections of the examination may be extended if a hardship exception is approved by the board.

AUTH: 37-50-204, 37-50-308, MCA

IMP: 37-50-204, 37-50-302, 37-50-303, 37-50-308, MCA

NEW RULE V TRANSITION RULE FOR APPLICANTS WHO HAVE PRE-COMPUTER-BASED EXAMINATION CONDITIONAL CREDIT (1) An applicant who has earned conditional credit on the paper-and-pencil examination at the implementation date of the computer-based examination will retain conditional credit for the corresponding test sections of the computer-based examination as follows:

paper-&-pencil exam section

computer-based exam section

auditing

auditing and attestation
(A&A)

financial accounting and
reporting (FARE)

financial accounting and
reporting (FAR)

accounting and reporting
(ARE)

regulation (REG)

business law and professional
responsibilities (LPR)

business environment and
concepts (BEC)

(2) Applicants who have attained conditional status under the paper and pencil examination as of the implementation date of the computer-based examination are allowed a transition period to complete any remaining test sections. The transition period lasts until the earlier of the following occurs:

(a) the applicant has exhausted the number of examination attempts remaining under the paper-and-pencil examination; or

(b) the remaining time that the applicant had under the paper-and-pencil examination to retake test sections not yet passed has expired.

(3) If an applicant that conditioned under the paper-and-pencil examination does not pass all remaining sections during the transition period, conditioned credit earned under the paper-and-pencil examination will expire, and the applicant will lose credit for those sections. However, any computer-based test section passed during the applicable transition period is subject to the granting of credit provisions of the computer-based examination. An applicant who conditioned under the paper-and-pencil examination will not lose credit for a section of the computer-based examination that is passed during the applicable transition period, even though more than 18 months may have elapsed from the date the section is passed.

(4) An applicant shall retain credit for any and all test sections of the examination passed in another state provided such credits meet the requirements of 37-50-204, MCA, and the applicable rules, and were earned under circumstances comparable to those in Montana.

AUTH: 37-50-204, 37-50-308, MCA

IMP: 37-50-204, 37-50-302, 37-50-303, 37-50-308, MCA

NEW RULE VI CHEATING (1) Cheating by a candidate in applying for, taking, or subsequent to taking the examination will be deemed to invalidate any score otherwise earned by a candidate on any test section of the examination. Cheating may warrant summary expulsion from the test site, and disqualification by the board from taking the examination for a specified period of time. For purposes of this rule, the following actions or attempted activities, among others, may be considered cheating:

(a) falsifying or misrepresenting education credentials or other information required for admission to the examination;

(b) communication between candidates inside or outside the test site or copying another candidate's answers while the examination is in progress;

(c) communication with others inside or outside the site while the examination is in progress;

(d) substitution of another person to sit in the test site in place of a candidate;

(e) reference to crib sheets, textbooks or other material or electronic media (other than that provided to the candidate as part of the examination) inside or outside the test site while the examination is in progress;

(f) violating the nondisclosure prohibitions of the examination or aiding or abetting another in doing so; or

(g) retaking or attempting to retake a test section by an individual holding a valid certificate or by a candidate who has unexpired credit for having already passed the same test section, unless the individual has been directed to retake a test section pursuant to board order or unless the individual has been expressly authorized by the board to retake the test section.

AUTH: 37-50-204, 37-50-308, MCA

IMP: 37-50-204, 37-50-302, 37-50-303, 37-50-308, MCA

6. The rules as proposed to be repealed are as follow:

8.54.402 EXAMINATIONS found at ARM pages 8-1477 and 8-1478.

AUTH: 37-1-131, 37-50-201, 37-50-308, MCA

IMP: 37-1-101, 37-50-308, MCA

8.54.403 OUT-OF-STATE CANDIDATES FOR EXAMINATION found at ARM page 8-1478.

AUTH: 37-1-131, 37-50-201, 37-50-308, MCA

IMP: 37-1-101, 37-50-308, MCA

8.54.404 EXAMINATION CREDITS - OUT-OF-STATE CANDIDATES found at ARM page 8-1479.

AUTH: 37-50-309, MCA

IMP: 37-50-309, MCA

8.54.405 CONSECUTIVE EXAMINATIONS AND REEXAMINATION REQUIREMENTS found at ARM pages 8-1479 through 8-1481.

AUTH: 37-50-203, 37-50-204, 37-50-308, MCA

IMP: 37-50-204, 37-50-308, MCA

8.54.407 QUALIFICATION FOR A LICENSE AS LICENSED PUBLIC ACCOUNTANT found at ARM pages 8-1481 and 8-1482.

AUTH: 37-50-203, 37-50-304, MCA

IMP: 37-50-303, 37-50-304, 37-50-308, MCA

7. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of

Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsdpac@state.mt.us and must be received no later than 5:00 p.m., February 27, 2004.

8. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://discoveringmontana.com/dli/pac> under the Board of Public Accountants rule notice section. The Department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

9. The Board of Public Accountants maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Public Accountants administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to dlibsdpac@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

10. The Board of Public Accountants will meet on March 10, 2004, at 9:00 a.m., via telephone conference call at the Board's offices, 301 South Park Avenue, room 430, Helena, to consider the comments made by the public, the proposed responses to those comments, and take final action on the proposed amendments, adoptions and repeals. Members of the public are welcome to listen to the Board's deliberations.

11. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

12. Mark Cadwallader, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PUBLIC ACCOUNTANTS
PATRICK W. HANLEY, CPA, CHAIR

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader,
Alternate Rule Reviewer

Certified to the Secretary of State January 16, 2004